

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SENIOR HOUSING ASSISTANCE  
GROUP,

Plaintiff,

v.

AMTAX HOLDINGS 260, LLC, et al.,

Defendants.

No. 2:17-cv-01115-RSM

**DEFENDANTS AND COUNTER-  
PLAINTIFFS' RESPONSE TO MOTION  
FOR LEAVE TO FILE BRIEF OF  
LEADINGAGE & NATIONAL  
HOUSING LAW PROJECT AS *AMICI  
CURIAE***

**NOTE ON MOTION CALENDAR:**  
January 11, 2019

AMTAX HOLDINGS 260, LLC, et al.,

Counter-Plaintiffs,

v.

SENIOR HOUSING ASSISTANCE  
GROUP, et al.,

Counter-Defendants.

1 Defendants and Counter-Plaintiffs AMTAX Holdings 260, LLC, Protech Holdings W,  
 2 LLC, AMTAX Holdings 259, LLC, AMTAX Holdings 261, LLC, AMTAX Holdings 258, LLC,  
 3 AMTAX Holdings 257, LLC, AMTAX Holdings 164, LLC, Protech 2002-A, LLC, AMTAX  
 4 Holdings 109, LLC, and Protech 2001-B, LLC (collectively, the “Limited Partners”) oppose the  
 5 Motion for Leave to File Brief of LeadingAge and the National Housing Law Project as *Amici*  
 6 *Curiae* in Support of Plaintiffs’ Motion for Summary Judgment and in Opposition to  
 7 Defendant’s Cross-Motion for Summary Judgment (Dkt. 109 (the “Motion”)) for the following  
 8 reasons:

9 First, the Motion should be rejected as untimely given that it was not filed—and the  
 10 proposed amicus brief was not disclosed—until twenty days after the filing of the motion for  
 11 summary judgment that the proposed brief claims to support. *Cf.* Fed. R. App. P. 29(a)(6)  
 12 (requiring a potential amicus to file its brief “no later than 7 days after the principal brief of the  
 13 party being supported is filed”); *Skokomish Indian Tribe v. Goldmark*, 2013 WL 5720053, at \*2  
 14 (W.D. Wash. 2013) (requiring, in accordance with the Federal Rules of Appellate Procedure, that  
 15 future amicus briefs be filed “no later than seven days after the party’s principal brief is filed”).  
 16 The Limited Partners were prejudiced by this delay because the Motion and proposed brief were  
 17 not filed until the *last day* of the Court-imposed—and publicly available—summary judgment  
 18 briefing schedule, thereby denying the Limited Partners *any* opportunity to respond. This delay  
 19 is particularly damaging in this case, where the trial is scheduled to commence just weeks from  
 20 now, on February 19, 2019.

21 Second, the Motion fails to establish how the issues identified in the proposed brief have  
 22 any bearing on the instant litigation.

23 Third, to the extent that the proposed brief does address issues relevant to this action, it is  
 24 duplicative of the *one hundred pages* of summary judgment briefing filed by the Plaintiff and  
 25 Counter-Defendants in this action, all of whom are represented by highly competent counsel.  
 26

1 Fourth, the proposed brief mischaracterizes the reasons why there is not enough  
 2 affordable housing in this country and erroneously contends—without any empirical support or  
 3 logical basis—that refusing to treat a right of first refusal like an option in this case “would  
 4 potentially cause a devastating impact on the availability of affordable housing.” (Dkt. 109 at 4.)

5 For all of these reasons, the Limited Partners oppose the Motion, and request that it be  
 6 denied. In the alternative, the Limited Partners respectfully request that, at a minimum, they be  
 7 permitted to file a response to the proposed *amicus* brief within seven days of the entry of an  
 8 order granting the Motion, so that the misstatements and erroneous arguments advanced in the  
 9 proposed brief can be identified for the Court.

10  
 11 RESPECTFULLY SUBMITTED this 7th day of January, 2019.

12 **Perkins Coie LLP**

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Attorneys for the Limited Partners

**CERTIFICATE OF SERVICE**

On January 7, 2019, I caused a copy of the foregoing document to be electronically filed via the Court's Electronic Case Filing System, which will notify all attorneys of record of the filing.

By: /s/ Steven D. Merriman  
Steven D. Merriman